

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LYNN MARIE JANISZEWSKI

Plaintiff,
v.
Civil Action No. _____

NCO FINANCIAL SYSTEMS, INC., **JURY TRIAL DEMANDED**

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by an individual consumer for Defendants violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION AND VENUE

2. Jurisdiction of this court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. § 1337.
3. Venue in this District is proper under 28 U.S.C. §1391(b) in that the Defendant transacts business here and in that the conduct complained of occurred here.

III. PARTIES

4. Plaintiff Lynn Marie Janiszewski is a natural person residing in the County of Erie in the State of New York and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
5. Defendant NCO Financial Systems, Inc. (hereinafter referred to as "NCO") is a corporation organized and existing under the laws of the State of Pennsylvania and is a "debt collector" as that term is defined by 15 U.S.C. §1692a(6).
6. Acts of the Defendant which are alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.
7. All references to "Defendant" herein shall mean the Defendant or an employee of the Defendant.

IV. FACTUAL ALLEGATIONS

8. That Plaintiff Lynn Marie Janiszewski incurred a debt to Bank of America (hereinafter referred to as “the subject debt”).
9. Upon information and belief, the subject debt was an obligation to pay money arising out of a transaction in which the money or services which were the subject of the transaction were primarily for personal, family, or household purposes.
10. Upon information and belief, the subject debt was a “debt” as that term is defined by is defined by 15 U.S.C. §1692a(5).
11. That Bank of America employed Defendant NCO to collect the subject debt.
12. That on or before June 14, 2007, Defendant made several telephone calls to Plaintiff’s brother’s wife’s parents (“Plaintiff’s in-laws”) requesting that they have Plaintiff return their telephone call.
13. That during said telephone calls, Defendant left multiple messages on Plaintiff’s in-laws telephone answering machine. In one or more of these messages, Defendant stated, “This is a call for Lynn Marie Janiszewski in regards to a litigation claim in Western New York” and concluded said message with the words, “Fold Soldier”. The messages did not disclose that Defendant was a debt collector.
14. That Plaintiff’s brother informed Plaintiff of the aforesaid telephone messages in June of 2007.
15. That as a result of the foregoing, Plaintiff became nervous, upset, and suffered emotional distress.

V. CAUSE OF ACTION

16. Plaintiff Lynn Marie Janiszewski repeats and re-alleges and incorporates by reference paragraphs 1 through 15 above.
17. The conduct of Defendant as described in this complaint violated the Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.) as follows:
 - A. Defendant violated 15 U.S.C. §§1692c(b), 1692b(1), and 1692b(3) by failing to limit the subject of their conversations with Plaintiff’s in-laws to seeking to obtain location information for Plaintiff and by calling them on more than one occasion.
 - B. Defendant violated 15 U.S.C. §§1692e, 1692e(2)(A), 1692e(5), and 1692e(10) by falsely representing that litigation was pending, or would imminently be pending in Western New York against Plaintiff.
 - C. Defendant violated 15 U.S.C. §1692d, 15 U.S.C. §1692d(5) by repeatedly calling the Plaintiff’s in-laws as described in this complaint.

D. Defendant violated 15 U.S.C. §1692e(11) by failing to disclose in their communications made indirectly with Plaintiff through Plaintiff's in-laws and Plaintiff's brother that they were a debt collector

E. Defendant violated 15 U.S.C. §1692d, 15 U.S.C. §1692d(2), and 15 U.S.C. §1692f by using the words "Fold soldier" on Plaintiff's in-laws telephone answering machine.

18. That as a result of the Defendant's FDCPA violations as alleged herein, Plaintiff Lynn Marie Janiszewski became nervous, anxious, upset, and suffered from emotional distress.

A JURY TRIAL IS DEMANDED.

Dated: January 28, 2008

/s/Kenneth R. Hiller, Esq.
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VERIFICATION OF COMPLAINT AND
CERTIFICATION BY PLAINTIFF

Lynn Marie Janiszewski, affirms that the following statements are true and correct under penalties of perjury:

1. I am the Plaintiff in this civil proceeding.

2. I have read the above-entitled civil Complaint prepared by my attorney and believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.

3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.

4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.

5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.

Dated: January 28, 2008

S/Lynn Marie Janiszewski

Lynn Marie Janiszewski